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WMS GAMING (DELIZIO GILLIAM) C/O DELIZIO GILLIAM, PLLC 15201 MASON ROAD SUITE 1000-312 CYPRESS, TX 77433			LE, LINH GIANG	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/689,842

Filing Date: October 13, 2000

Appellant(s): HALBRITTER et al.

Andrew DeLizio
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10 September 2008 appealing from the Office action mailed 18 October 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5506587	LANS	04-1996
5987421	CHUANG	11-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-16, 30-45, 54-57 and 71-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lans (5,506,587) in view of Chuang (5,987,421).

3. As per claim 1, Lans teaches a method for locating a patron at a hospitality facility including a server and a plurality of client terminals, the method comprising: receiving, from one of the plurality of client terminals, a patron identifier identifying a particular patron and a location identifier identifying a location (Lans; Col. 8, lines 26-45).

Storing, by the server, the location identifier in an account corresponding to the particular patron identified by the patron identifier (Lans; Col. 9, lines 16-25 and Col. 9, line 44 to Col. 10 line 6). Examiner submits that the “user directory” that includes “identities” and “positions” reads upon an “account” affiliated with a patron. Each “identity” in a “user directory” represents a patron “account.”

Retrieving by the server from the account corresponding to the particular patron the location identifier for the particular patron (Lans; Lans; Col. 9, lines 16-25 and Col. 9, line 44 to Col. 10 line 17); and

sending a message based on the location identifier for the particular patron (Lans; Col. 9, lines 35-38).

Lans does not expressly teach the above method steps in a hospitality facility or receiving, from another of the plurality of client terminals, a request for the location of the particular patron. However, these features are well known in the art as evidenced by Chuang. IN particular, Chuang teaches a GID device for transmitting a signal to locate another guest in a hospitality facility (Chuang Col. 11, lines 48-65). It would

have been obvious to add these features to the Lans teaching with the motivation of allowing park visitors to search for the location, distance and direction of other group members within a hospitality facility (Chuang; Abstract).

4. As per claim 2 Chuang teaches wherein sending a message includes sending, to the client terminal, directions to a location corresponding to the location identifier for the particular patron (Chuang; Col. 12, lines 6-12).

5. As per claim 3, Chuang teaches wherein sending a message includes sending, to the client terminal, a map with directions to a location corresponding to the location identifier for the particular patron (Chuang; Col. 12, lines 12-20).

6. As per claim 4, Chuang teaches wherein sending a map includes deriving the map from a location identifier corresponding to the client terminal and the location identifier for the particular patron (Chuang; Col. 12, lines 1-20).

7. As per claim 5, Chuang teaches wherein sending a message comprises sending the message to the particular patron(Chuang; Col. 12, lines 6-12).

8. As per claims 6-8, Chuang does not expressly teach:

wherein sending a message comprises sending, to the particular patron, a message for a rendezvous.

wherein sending a message comprises sending, to the particular patron, a status message indicating the status of an offline game.

sending a message comprising sending, to the particular patron, a promotional message.

However these features are obvious variations of the Chuang teachings.

Chuang teaches a "message" feature in the GID device (Chuang; Col. 9, lines 14-21).

Examiner respectfully submits that one of ordinary skill in the art would find these features to be an obvious variation of what Chuang teaches with the motivation of networking the entire guest population and also increasing the business throughout the park (Col. 4, lines 8-20).

9. As per claims 9 and 10, Chuang does not expressly teach:
receiving from a client terminal a request for an address book; and sending the address book to the client terminal;
receiving a request for the location of a particular patron comprises receiving a selection of the particular patron from the address book.

However these features are obvious variations of the Chuang teachings.

Chuang teaches locating a particular GID device of a patron (Chuang; Col. 11, line 47 to Col. 12, line 20). Examiner respectfully submits that one of ordinary skill in the art

would find these features to be an obvious variation of what Chuang teaches with the motivation of providing visitors with the ability of finding out the exact location, distance and direction of another member of the same group (Chuang; Col. 6, lines 43-46).

10. As per claims 11-16, Chuang does not expressly teach:

Wherein sending a message comprises sending an e-mail message;

Wherein sending a message comprises sending an instant message;

Wherein sending a message comprises sending a broadcast message to the plurality of client terminals;

Wherein sending a broadcast message includes sending a missing patron;

Wherein sending a broadcast message comprises sending a promotional message to the plurality of client terminals; and

Wherein sending a broadcast message comprises sending a notification message to the plurality of client terminals.

However these features are obvious variations of the Chuang teachings.

Chuang teaches a "message" feature in the GID device (Chuang; Col. 9, lines 14-21).

Examiner respectfully submits that one of ordinary skill in the art would find these features to be an obvious variation of what Chuang teaches with the motivation of networking the entire guest population and also increasing the business throughout the park (Col. 4, lines 8-20).

11. Claims 30-35 repeat the of limitations of claims 1-16 and the reasons for rejection are incorporated herein.

12. As per claims 36-45, Lans teaches a computer-readable medium containing instructions (Col. 9, lines 1-25) for locating a patron. The remaining features of claims 36-45 repeat limitations of claims 1-16 and the reasons for rejection are incorporated herein.

13. Claims 54-57 repeat the limitations of claims 36-45 and the reasons for rejection are incorporated herein.

Claims 71-78 repeat the limitations of claims 1-16 and the reasons for rejection are incorporated herein.

(10) Response to Argument

In the Appeal Brief filed 10 September 2008, Appellant makes the following arguments:

A) Claims 1-16, 30-45, 54-57 and 71-78 are *not* obvious under 35 USC 103(a) as being unpatentable over Lans (5,506,587) in view of Chuang (5,987,421).

Examiner will address this argument in detail below:

Applicant first argues on pg. 7 of the 9/10/08 Appeal Brief that Lans does not teach the feature of "receiving, from one of the plurality of client terminals, a patron identifier identifying a particular patron and a location identifier identifying a location in the hospitality." Examiner disagrees. Examiner submits that Lans teaches a GPS system that transmits both the position (reads on "location identifier") and identity code (reads on "patron identifier") (Lans; Col. 8, 50-65).

Applicant next argues on pg. 7 of the 9/10/08 Appeal Brief that Lans teaches away from Chuang and modifying Lans would render Lans unfit for its intended purpose. Examiner disagrees. The prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution

claimed...." See *In re Fulton*, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004). Applicant argues that one object of the invention is to avoid the necessity of beacon infrastructure. However, Lans does not does not criticize, discredit or otherwise discourage retrieving patron and location identifiers.

In addition, as discussed in the *KSR International Co. v. Teleflex Inc. et al.*, 127 S.Ct 1727 (2007), "[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) ('[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness'). As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ" (emphasis added). Lans is applied to show that GPS systems used to retrieve location and patron identifiers are old and well known in the art. Chuang teaches that finding that the location of a patron in a hospitality facility is old and well

known in the art. Since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Applicant further argues that impermissible hindsight is used in combining Lans and Chuang. Examiner disagrees. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Examiner submits that Examiner has only taken into account knowledge that was within the level of ordinary skill in the art at the time the claimed invention was made to combine the Lans and Chuang references.

Applicant argues on pg. 10 of the Appeal Brief that with regards to claims 9 and 10, Chuang's system asserts that it needs no modification to determine location, distance and direction within a park. Examiner again asserts that KSR teaches the analysis need not seek out precise teachings directed to the specific subject matter of

the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ. The claimed invention is merely a combination of old elements as taught in Lans and Chuang, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Applicant next argues that as per claims 30-35 and 54-57, Lans in view of Chuang does not teach the limitations. Examiner disagrees. Examiner submits that the features of claims 30-35 and 54-57 are obvious variants of the teachings of claims 1-16. Further, Applicant argues that Lans in view of Chuang does not teach requesting and receiving a list of patrons from a server and storage of location information by a server in an account associated with a patron. Examiner submits Lans teaches storing and retrieving *by the server* patron information (Lans; Col. 9, lines 16-25). Lans further teaches a "user directory" with an updated list of identities and positions of participants. Examiner believes this clearly reads upon a patron "account" as both serve the purpose of keeping information related to a certain patron or participant organized.

As per claims 36-40 and 43-45, Applicants repeat similar arguments as above with regards to claims 30-35 and 54-57. Examiner's arguments in rebuttal are incorporated herein.

As per claims 71-78, Applicant argues on pg. 13 of the Appeal Brief that Lans in view of Chuang does not teach client terminals and servers. Applicant further argues that the system in claim 71 works in a fundamentally different way than Lans and Chuang. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant argues specifically that Lans in view of Chuang does not teach a database server for retrieving, from an account corresponding to the particular patron, a location identifier for the particular patron. Lans teaches a memory that stores a catalogue of identities and positions (Lans; Col. 9, lines 15-25). Chuang is applied to teach the feature of locating patrons in a hospitality facility. Since the rejection is based on a combination of references, Applicant can not show non-obviousness by attacking the references individually.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Michelle Le /M. L./
Examiner, Art Unit 3686
11/20/2008

/Gerald J. O'Connor/
Supervisory Patent Examiner
Group Art Unit 3686

Conferees:

Jerry O'Connor /GJOC/
Supervisory Primary Examiner
Tech Center 3600

Vincent Millin /vm/
Appeals Practice Specialist
Tech Center 3600

Copy to Appellant:

DELIZIO GILLIAM, PLLC
15201 Mason Road
Suite 1000-312
Cypress, TX 77433
281-758-0025